2012.

SUPREME COURT OF THE UNITED STATES.

No. 118.

JONATHAN PALMER, NATHANIEL WALDRON, BENJ. B. CRAYCROFT, AND WILLIAM B. FISHER, OWNERS OF THE BARQUE DELAWARE, HER TACKLE, APPAREL, AND FURNITURE, APPELLANTS,

vs.

THE PHILADELPHIA AND ATLANTIC STEAM NAVIGATION COMPANY, OWNERS OF THE STEAMSHIP OSPREY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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[GIDEON, Print.]

PALMER and others
vs.
The OSPREY.

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit. Of April session, 1852. No 1.

It is thus contained:

Pleas before the honorable the judge of the district court of the United States, in and for the eastern district of Pennsylvania, in admiralty.

Be it remembered, that on the thirteenth day of September, A. D. 1850, F. A. Raybold, esquire, one of the proctors of said court, comes into the said court, and exhibits the libel and complaint of Jonathan Palmer and others, owners of barque Delaware, against the steamer Osprey; which said libel being filed is in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States of America, in and for the eastern district of Pennsylvania.

The libel and complaint of Jonathan Palmer, Nathaniel Waldron, Benjamin B. Craycroft, and William B. Fisher, against the steamship Osprey, her tackle, apparel, and furniture, and against —— Dickinson, master thereof, and also against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime; and thereupon the said libellants allege and articulately propound as follows, viz:

First. That the libellants, at and before the time of the collision hereinafter mentioned, were the true and lawful owners of the barque Delaware, a vessel employed in trade between the port of Philadelphia and Boston, Massachusetts, which said barque is of the burthen of 199 tons.

Second. That on the evening of Saturday, the thirty-first day of August last, between eight and nine o'clock, the said barque Delaware, being under the command of Edward Lewis, master thereof, and being in all respects tight, staunch, and strong, and properly manned and equipped for the voyage, having on board a cargo of merchandise and several passengers, was on her course to the port of Philadelphia, from Boston aforesaid; and after having passed into the bay of Delaware, and when about seven miles above the Cape Henlopen light-house, and about the same distance below the Brandywine shoal light-boat, and steering about north-northwest, was run into by the said steamship Osprey, as herein before set forth.

Third. That the night was overcast with clouds, and the said

barque Delaware had the usual watch on deck; the tide was ebbing, and consequently against the said barque, but the wind was about southeast; and while heading north-northwest as aforesaid, and about six or seven miles above Cape Henlopen light, a light was seen by the master of the Delaware, who was on deck on the look-out, which lights proved to be the lights of a steam vessel, but which way she headed, or what her course was, he could not discover. He immediately ordered the light of the barque, which was well trimmed, to be raised, so as to be distinctly seen; this was nearly nine o'clock at night. That the approach of the steamer, which proved to be the Osprey, J. Dickinson, master, was so rapid, being under full head of steam, and with the tide coming at the rate of eleven or twelve miles an hour at least, that the master of the barque did not ascertain (although from the time he first descried her he endeavored so to do) the course of the steamer, and whether she was going to cross his starboard or his larboard bow, until within about thirty seconds of the collision, when, perceiving she would cross the starboard bow of the barque, he gave orders to heave the helm hard to starboard, to avoid a collision; and immediately he heard an order given on board the steamship Osprey to put the helm "hard a-port;" at the same time the steamer's engine bell rang, and the order, hard a-port, was repeated. In a very short time the steamer struck the baque's anchor, which hung at her starboard cat-head, then passing along until the starboard wheel struck the knight-head of the barque, and, rolling over her about four feet in width, as far as the fore-topmast back-stays, tore away and destroyed the starboard knight-head, main-rail, windlass, and deck of the barque, and also her fore rigging, fore-sail, lower studding-sail, end of the fore yard, and topmast studding-sail boom, leaving some iron parts of the wheel of the steamer on board of the barque.

Fourth. That as soon as the course of the steamer was perceived, the captain of the barque ordered the helm hard a-starboard, to avoid the collision, which order was obeyed. This was the only change made in the course of the barque; but the course of the steamer was not changed until the moment she struck the barque; and from the effect of the collision, and the manner the wheel rolled over the said barque, the speed of the steamer must have been very great up to the time she struck. That the injury by the collision to the barque was very great, and the whole damage incurred thereby is estimated at fifteen hundred dollars.

Fifth. That the said barque Delaware was under the command of a competent captain, and was furnished with officers and crew, and in all things conformed in her navigation and management to the laws and usages of navigation. That the collision aforesaid occurred as aforesaid in the Delaware bay, and within the jurisdiction of this honorable court; and the said steamship Osprey is now within the eastern district of Pennsylvania.

Sixth. That the said collision between the said steamship Osprey and the said barque Delaware was caused entirely by the fault, mis-

management, mistakes, bad seamanship, carelessness, or wilful conduct of those in command or charge of the said steamship Osprey, and not at all by any neglect, default, or mismanagement, on the part of those on board of the barque Delaware. Every effort was made on board the barque to avoid the said collision.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore they pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship Osprey, her tackle, apparel, and furniture, and also that her said master, and all persons interested therein, may be cited to appear and answer the matters aforesaid, and that your honor may pronounce for the damages aforesaid, with costs, and make such further order and decree as to law and justice may appertain.

NATHANIEL WALDRON,
For himself and others, owners.
F. A. RAYBOLD, *for Libellants.*

Nathaniel Waldron, being duly sworn, saith, that the contents of the foregoing libel, so far as stated of his own knowledge, are true; and those things stated upon the knowledge or information of others, he believes to be true.

NATHANIEL WALDRON.

Sworn and subscribed, September 13, 1850.
CHARLES F. HEAZLITT,
U. S. commissioner.

And now, this thirteenth day of September, 1852, the court having considered the said libel, it is ordered and decreed, that process of law do issue according to the prayer of the said libellant, in said libel of complaint set forth and contained, on compliance, on his part, with the rules of court in that behalf established; and that stipulation on the part of the impugnant, if such there shall be, be taken, in the sum of twenty-five hundred dollars, to answer, abide by, fulfil, perform, and pay, &c., according to the law and practice of this court.

And stipulation for costs being duly entered, process is issued, in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania.

[L S.] John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting:

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the steamer or vessel

called the Osprey, Dickinson, master; together with all and singular her tackle, apparel, and furniture, as the same now are, and the same safely keep, to abide the final order and decree of this court, in a certain plea, civil and maritime, herein prosecuted against the said steamer, &c., by Jonathan Palmer, Nathaniel Waldron, B. B. Craycroft, and William B. Fisher, owners of the barque Delaware, libellants, for collision, &. And you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me, at a special session of this court, to be holden at the room of the district court of the United States, in the city of Philadelphia, on the fourth day of October next, at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said steamer, &c., should not be condemned, &c., for the payment of the damages, &c.; and have you then there this writ.

Given under the seal of said court, at Philadelphia, this thirteenth day of September, A. D. 1850, and in the seventy-fifth year of the independence of the United States.

THOMAS L. KANE,
Clerk district court, U. S.

Whereupon stipulation is entered in the words following, to wit:

Be it remembered, that at a special district court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the thirteenth day of September, 1850, and in the seventy-fifth year of the independence of the said United States, before the honorable John K. Kane, judge of said court, comes John Linton, who, freely and voluntarily submitting himself to the jurisdiction of the said court, acknowledges himself to be indebted unto Jonathan Palmer, Nathaniel Waldron, and others, owners of the barque Delaware, in the sum of twenty-five hundred dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements, of the said John, to the use of the said Palmer and others, owners of the said barque Delaware. Upon condition, that whereas a suit is now pending in the said court for collision, wherein the said Palmer and others are the libellants against the steamer Osprey, Dickinson, master, and the Philadelphia and Atlantic Steam Navigation Company, by J. L. Linton, claimant:

Now, if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending; and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid, on their part, then this stipulation shall be void; otherwise in force, and execution may issue by virtue thereof at one and the same time against any or all of the parties to this stipulation.

JOHN LINTON.

2015.

Taken, acknowledged, and subscribed on the day and year above written.

CHAS. F. HEAZLITT,
Clk. dist. ct., P. T.

The above named John Linton, being duly affirmed, deposes and says, that he is permanently a householder within this district, and that he is worth the sum of twenty-five hundred dollars, after payment of his just debts and liabilities.

And thereupon it is ordered, that a writ of restitution issue to the marshal, directing him to restore the said steamer to the claimant, upon payment to him of his costs, and the necessary expenses by him incurred, which said writ of restoration is in the words following, to wit:

UNITED STATES,
Eastern district of Pennsylvania.

John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting: [L. S.]

You are hereby commanded to deliver and restore unto John L. Linton the steamer or vessel called the Osprey, with her tackle, apparel, and furniture, or so much thereof as was lately, and is now, in your custody and possession, by virtue of a writ of attachment lately issued out of said court, at the suit of Palmer and others, owners of the barque Delaware, libellants, for collision; and how you shall have executed this writ make return to me at a special session of said court, to be holden at the city of Philadelphia, on the twentieth day of September, instant, at 11 o'clock, a. m.; and have you then and there this writ.

Given under the seal of said court, at Philadelphia, this thirteenth day of September, A. D. 1850, and in the 75th year of the independence of the said United States.

THOMAS L. KANE,
Clerk, dist. ct., U. S.

And George M. Wharton, esquire, and Thomas Balch, esquire, proctors of the said court, also come into the said court and exhibit the answer of the said the Philadelphia and Atlantic Steam Navigation Company; said answer being in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States, for the eastern district of Pennsylvania:

The answer of John L. Linton, of the city and county of Philadelphia, for the purpose duly authorized as agent by the Philadelphia and Atlantic Steam Navigation Company, intervening for the interest of the said company in the steamship Osprey, to the libel and complaint of Jonathan Palmer and others, answers and alleges as follows:

First. That this respondent does not know of his own knowledge, but admits, on information and belief, the truth of the matters alleged

in the first article of said libel, and that the libellants are and were owners of the barque Delaware, as alleged in said article.

Second. That of the several matters and things contained in the second, the third, and the fourth articles of said libel, this respondent has no personal knowledge, but this respondent, upon information and belief, denies the same, and alleges the truth to be as hereinafter stated, to wit: That the said steamship Osprey, on the night in said libel stated, at a little after eight o'clock, under the command of the said Dickinson, and being tight, staunch, and strong, and properly manned and equipped for the voyage, and having on board ninety-eight passengers, and an assorted cargo of merchandise, was on her course from Philadelphia to Charleston aforesaid, in performance of a stated trip, and was between the Brown Shoal and Cape Henlopen light-house, and steering about southeast, when she was run into by the said barque Delaware. That the said Osprey had her usual, to wit, three signal lanterns, hung out. The night was dark, but the said barque Delaware had no light out, nor had she, it is believed, any watch on deck. The wind was from the southeast, and the barque running full before it. The latter was steering a little to the windward of the Osprey, but just before the collision she altered her course slightly, and ran directly into the steamer. The latter did not perceive her until she was close aboard, and by stopping her engine, and backing, did all in her power to prevent the collision. Her officers also frequently hailed the barque, which, however, took no measures to prevent the contact. The collision was caused entirely by the fault, mismanagement, mistake, bad seamanship, or wilful conduct of those those on board the said barque, and not at all by any neglect or default of those on board the Osprey. That the said Osprey was then under the command of a competent captain, to wit, the said Dickinson, and also a skilful pilot, and conformed in all things in her navigation to the laws and customs of the same, while the said barque did not conform thereto.

Third. That of the matters and things contained in the fifth and sixth articles of said libel, this respondent has no personal knowledge, but, on information and belief, he alleges the contrary thereof to be true, and says, that the said captain and crew were not competent and sufficient, but wholly otherwise; that said barque Delaware did not conform in all things in her management and navigation to the laws and usages of navigation, but violated the same, and in particular by not having a watch on deck and a light properly hung out, according to maritime law and usage; that the said collision was caused wholly by the wilful neglect, default, and mismanagement of the said captain and crew of the said barque, and was in no respect caused by the want of skill, precaution, or attention of the officers and crew of the Osprey; but, on the contrary thereof, the said officers and crew of the Osprey gave and made every effort and precaution to prevent the same. And this respondent admits that the said collision occurred within the jurisdiction of this honorable court.

Fourth. That all and singular the premises are true. Wherefore

the respondent prays that this honorable court will be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

JOHN L. LINTON.

GEORGE M. WHARTON,
THOMAS BALCH,
Proctors.

John L. Linton, being duly sworn, saith, that the contents of the foregoing answer, so far as stated of his own knowledge, are true; and those things stated upon the knowledge and information of others he believes to be true.

Sworn to this 29th day of November, A. D., 1850, before
CHARLES F. HEAZLITT,
U. S. commissioner.

And the said libellants make and file their replication in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States of America, in and for the eastern district of Pennsylvania.

The replication of Jonathan Palmer, Nathaniel Waldron, Benjamin B. Craycroft, and William B. Fisher, libellants, to the answer of the Philadelphia and Atlantic Steam Navigation Company, alleging as follows:

First. That the said libel is true and sufficient, and they are ready to prove and maintain the same; and that the said answer is untrue, uncertain, and insufficient.

Second. That the libellants deny the several matters and things contained in the second and third articles of the answer aforesaid, and allege the truth of and concerning the same to be as follows, to wit: That the said barque Delaware had a light, and did display the same, and that she had a good and attentive watch on deck; that the barque did not alter her course, until within a very short time of the collision; the captain saw that, by bad seamanship, neglect, or inattention, of those on board the said steamer, her course was so changed as to run down the said barque, if she held her course; when, to avoid which catastrophe, he ordered the helm to be put hard a-starboard, which being done, the steamer's wheel struck on the starboard knighthead; that, if such change had not been made, the barque would inevitably have been run down by the said steamer; that the collision was caused by the change in the course of the steamer, made suddenly and unwisely, under the circumstances; that had the steamer kept her course, or ported her helm when she put it to starboard, the collision would have been avoided.

Third. That the said collision was not caused by the fault, mismanagement, or misconduct, of those on board the barque, but, on the

contrary, caused by want of skill, mismanagement, want of attention, and bad seamanship of those on board of the steamer. That so far from the steamer being backed, she had headway up to the moment of collision, and her wheels rolled over the starboard deck of the said barque. That the said barque was commanded by a competent and skilful captain, and the other officers and the crew were competent and sufficient, and in the navigation and management of the said barque they conformed in all things to the laws and usages of navigation, and that they made every effort to avoid the said collision.

Fourth. That all and singular the premises are true, and libellants pray as they, in their libel, have heretofore prayed.

NATHANIEL WALDRON,
For self and other owners.
F. A. RAYBOLD, *for libellants.*

Sworn and subscribed by N. Waldron, this 8th day of April, A. D. 1851.

CHARLES F. HEAZLITT,
U. S. comm'r.

Afterwards, to wit, on the third day of January, A. D. 1851, the said libellants, by their proctors, make and present a petition in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States of America, in and for the eastern district of Pennsylvania, in admiralty.

The petition of Jonathan Palmer, Nathaniel Waldron, Benjamin B. Craycroft, and William B. Fisher, owners of the barque Delaware, respectfully showeth: That your petitioners, on the day of last, filed a libel in this honorable court against the steamship Osprey, her tackle, apparel, and furniture, and against Dickinson, the master thereof; and also against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime.

That at the time of so filing said libel your petitioners were under the impression and belief that the injury and damage to their vessel, the barque Delaware, by reason of the said collision, would not exceed the sum of fifteen hundred dollars, at which sum they estimated the said damages. That at the time such estimate was made, the said barque Delaware was being repaired; since which time, the repairs being finished, and the several bills therefor presented, your petitioners find that said damages to their said vessel, and the necessary expenses incurred in repairing the same, and detention and loss consequent upon the same, amount to twenty-five hundred and ninety dollars.

Your petitioners therefore pray your honor to order further and additional stipulation to be entered by respondents to the said libel of your petitioners in such sum as to your honor may seem just and proper.

And your petitioners will ever pray, &c.

NATH'L WALDRON.

Nathaniel Waldron, being duly sworn, saith, that the contents of the foregoing petition are true to best of his knowledge and belief.

Sworn and subscribed January 8, 1851, before

CHAS. F. HEAZLITT,
U. S. C.

Whereupon it is ordered by the court that the prayer of the said petitioners be granted, and that additional stipulation be entered by the respondents; the costs thereof to be paid by the libellants absolutely.

And stipulation being entered, is in the words following, to wit:

Be it remembered, that at a special district court of the United States, in and for the eastern district of Pennsylvania, holden at Philadelphia, on the twenty-first day of January, A. D. 1851, and in the seventy-fifth year of the independence of the said United States, before the honorable John K. Kane, judge of said court, comes Benjamin W. Tingley, who, freely and voluntarily submitting himself to the jurisdiction of the said court, acknowledges himself to be indebted unto Jonathan Palmer, Nathaniel Waldron, B. B. Craycroft, and William B. Fisher, owners of the barque Delaware, in the sum of one thousand dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements, of the said Benjamin W., to the use of the said Jonathan, Nathaniel, B. B. Craycroft, and Wm. B. Fisher.

Upon condition, that whereas a suit is now pending in the said court for collision, wherein the said Jonathan Palmer and others, owners of the barque Delaware, are the libellants, against the steamer Osprey, the Philadelphia and Atlantic Steam Navigation Company, owners, and the said the Philadelphia and Atlantic Steam Navigation Company, claimants. Now, if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void; otherwise in force, and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

B. W. TINGLEY.

Taken, acknowledged, and subscribed in open court, on the day and year above written.

CHAS. F. HEAZLITT,
Clk. dist. ct., P. T.

The above named B. W. Tingley, being duly sworn, deposes and says, that he is permanently a householder within this district; that he is worth the sum of one thousand dollars, after payment of his just debts and liabilities.

[This bond is given as additional security, pursuant to the order of court of 3d January, 1850, upon petition of libellants filed that day.]

Afterwards, to wit, on the twenty-fourth day of October, 1851, a cer-

tain bond or stipulation is entered into in pursuance of agreement, and is in the words following, to wit:

Be it remembered, that at a special district court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the twenty-fourth day of October, A. D. 1851, and in the seventy-sixth year of the independence of the said United States, before honorable John K. Kane, judge of said court, comes E. Z. Steever, who, freely and voluntarily submitting himself to the jurisdiction of the said court, acknowledges himself to be indebted unto Jonathan Palmer, Nathaniel Waldron, B. B. Craycroft, and William B. Fisher, owners of the barque Delaware, in the sum of twenty-five hundred dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements, of the said E. Z. Steever, to the use of the said the owners of the said barque Delaware. Upon condition, that whereas a suit is now pending in the said court for collision, wherein the said Jonathan Palmer and others, above named, are libellants, against the steamship Osprey, Dickinson, master, and the Philadelphia and Atlantic Steam Navigation Company, claimants. Now, if the said claimants shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on their part, then this stipulation shall be void; otherwise in force, and execution may issue by virtue thereof, at one and the same time, against any or all the parties to this stipulation.

EDGAR Z. STEEVER.

Taken, acknowledged, and subscribed, on the day and year above written.

THOMAS L. KANE,
Clerk dist. ct., U. S.

The within named E. Z. Steever being duly sworn, deposes and says, that he is permanently a householder within this district; that he is worth the sum of twenty-five hundred dollars, after payment of his just debts and liabilities.

[This bond is given in lieu of that signed by John L. Linton, on the thirteenth day of September, 1850, and is intended to be substituted as surety instead of said John L. Linton.]

Afterwards, to wit, on the thirtieth day of January, A. D. 1852, the said libel, answer, and replication, having been read, and the proofs thereupon, with the arguments of the proctors of the several parties, being duly considered, it is ordered and decreed by the court that the said libel be dismissed with costs.

And thereupon the said libellants pray leave to appeal from the decree aforesaid to the next circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, which is allowed upon security being given.

2018.

UNITED STATES,
Eastern district of Pennsylvania.

I certify the foregoing to be a true and faithful copy of the originals, filed and now remaining among the records of the district court of the United States, in and for the eastern district of Pennsylvania, in my office, in a certain suit in admiralty therein lately depending between Palmer and others, owners of the barque Delaware, libellants, and the steamer Osprey, the Philadelphia and Atlantic Steam Navigation Company, respondents, together with the decree of court therein.

Witness my hand and the seal of said court, at Philadelphia, this fifth day of April, 1852, and in the seventy-sixth year of the [L. S.] independence of the said United States.

THOMAS L. KANE,
Clerk dist. court, U. S.

Whereupon, afterwards, to wit, on the thirteenth day of September, 1852, all and singular the matters being duly considered, and the arguments of the several proctors being heard, it is ordered, adjudged, and decreed by the court, that the decree of the said district court be in all things affirmed, and that said appeal be dismissed with costs.

And thereupon, on the twenty-second day of September, the said libellants pray leave to appeal from the said decree to the Supreme Court of the United States, at the city of Washington, which said appeal is allowed, upon security being given.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss.

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, in a certain plea, civil and maritime, therein lately depending, wherein Jonathan Palmer and others, owners of the barque Delaware, were libellants, and the steamship Osprey, the Philadelphia and Atlantic Steam Navigation Company, owners, were respondents.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Philadelphia, this 20th [L. S.] day of November, A. D. 1852, and in the seventy-seventh year of the independence of the said United States.

GEORGE PLITT,
Clerk circuit court.